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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter)	
)	
Review of the Commission's)	
Regulations Governing Attribution)	MM Docket No. 94-150
of Broadcast Interests)	
)	
Review of the Commission's)	MM Docket No. 92-51
Regulations and Policies)	
Affecting Investment)	
in the Broadcast Industry)	
)	
Reexamination of the Commission's)	MM Docket No. 87-154
Cross-Interest Policy)	

**COMMENTS OF
NEW WORLD COMMUNICATIONS GROUP INCORPORATED**

New World Communications Group Incorporated ("New World"),
by its attorneys, hereby submits its comments in the above-captioned dockets.
The subject Notice of Proposed Rule Making ("NPRM") proposes to reexamine
the broadcast television attribution rules and policies concerning investments in
broadcast stations. As the licensee of 12 full power television stations, New
World has significant interest in the outcome of this proceeding.

The purpose of the attribution rules is to assist the Commission in
evaluating whether a specific ownership interest conveys a degree of influence or
control to its holder sufficient to warrant restriction by the Commission's multiple

ownership rules.¹ Among other issues, the NPRM requests comment on whether the Commission should restrict the availability of the single majority shareholder exemption from attribution.²

COMMENTS

New World recommends that the Commission retain its existing exception to its attribution rules for licensees with a single majority shareholder (i.e., a shareholder holding more than 50% of the corporate licensee's outstanding voting stock).³ When it adopted the exception in 1984, the Commission found that minority interest holders in a firm with a single majority shareholder, even acting together, cannot control the affairs or activities of the licensee on the

¹ Memorandum Opinion and Order, Dockets No. 20521, 20548, BC Docket No. 78-239, MM Docket No. 83-46, 50 Fed. Reg. 27,438 (1985) ("Attribution MO&O").

² See NPRM at paras. 51-54.

³ 47 C.F.R. § 73.3555 note 2(b). New World has reported to the Commission that, through various wholly owned companies, Mr. Ronald O. Perleman holds approximately 88% of its total voting power. Thus, under current rules, all other interests in New World are non-attributable because of Mr. Perleman's status as a single majority shareholder.

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basis of their shareholdings.⁴ New World submits that the conclusion reached by the Commission in 1984 continue to hold true today.⁵

The NPRM states that the Commission "can conceive" of an example that could potentially raise concerns.⁶ In its example, the NPRM discusses the possibility of a licensee with a single majority shareholder and a single minority shareholder (holding 49% of the voting stock) that also holds a large proportion of nonvoting shares or has provided substantial debt financing, which would be exempted from the broadcast attribution rules by this policy.⁷ New World recognizes the Commission's concern that there may be a single majority shareholder owned company in which other parties have a sufficient degree of influence that their interest should be recognized. It does not appear that there is any single characterization of such a situation, however. Even in the NPRM's own example one cannot presume that the minority shareholder has any more influence or control over the station than any other provider of financing. Another factor that might affect the minority shareholder's status is whether it

⁴ Report and Order, MM Docket No. 83-46, 97 F.C.C. 2d 997 (1984) ("Attribution Order").

⁵ New World also notes that the NPRM cites no case or evidence indicating that this 1984 finding requires review.

⁶ NPRM at para. 51.

⁷ Id.

also provides services and, if so, of what kind to the station. In cases where there is a single majority shareholder, the analysis of whether an otherwise unattributable investor has sufficient influence or control to rebut the presumption that it does not should be similar to the Commission's method of determining whether a de facto transfer of control has occurred. This "depends largely upon a review of the actual operation of the licensee -- *not upon the potential for some hypothetical future exercise of control.*"⁸ Except where conduct demonstrates that control has actually been exercised, the Commission will find a de facto transfer of control to a minority shareholder only where there is a clear evidence of that minority shareholder's dominance, *i.e.*, evidence that the minority shareholder has control over majority shareholder.⁹

⁸ See Letter to Mr. William S. Paley, CBS, Inc. By Direction of the Commission, FCC 86-466, 1 FCC Rcd 1025, 1026 (1986) (emphasis added) (citing News Int'l, PLC, 97 F.C.C. 2d 349 (1984)). In this case, the Commission found that Mr. Laurence A. Tisch's acquisition of 25% of CBS's total equity and voting stock, ascension to CEO, chairman of CBS's management committee and acting chairman of CBS's board neither constituted a de facto transfer to Mr. Tisch nor required further examination by the Commission. The Commission found that there was no evidence that Mr. Tisch has the sort of influence with the remaining shareholders that the Commission has found to constitute de facto control and because 75% of CBS's total equity and voting stock remained in the control of unaffiliated shareholders. Id. at 1026.

⁹ Id. (citing George E. Cameron, Jr., 91 F.C.C. 2d 870, 889-90 (Rev. Bd. 1982), recon. denied, 93 F.C.C. 2d 789 (1983), applications for review dismissed as moot, FCC 84-367 (1984) (wherein the Review Board found that a 49% shareholder, director and officer possessed de facto control of the licensee corporation because he: (1) had a 49% interest in the company with an option to increase its

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The Commission recently determined in the PCS context that the mere possession of a 49.9% interest by a single minority shareholder is not prima facie evidence of de facto control of a license where a certain entity or group holds 50.1% of the total equity and voting stock.¹⁰ Moreover, the Commission

⁹(...continued)

interest to 100%; (2) was the managing partner of the licensee's parent company and president of the subsidiary/licensee; and, (3) held judgments against other principals which, if exercised, "would financially cripple them.") and Western Gateway Broadcasting Corp., 16 F.C.C. 274 (1951) (wherein a minority shareholder's demonstrated ability to control both his own and his relatives' shares resulted in a finding the minority shareholder had acquired de facto control)).

¹⁰ The Commission essentially sanctioned the NPRM's example in its PCS competitive bidding proceeding. See Fifth Report and Order, PP Docket No. 93-253, paras. 116-117, 160-162 (released July 15, 1994) ("PCS Order"); Fifth Memorandum Opinion and Order, PP Docket No. 93-253, paras. 62-76 (released Nov. 23, 1994) ("Revised PCS Order"). Specifically, the Commission adopted structural rules for minority- and/or women-owned PCS applicants/licensees that permit a single investor to hold up to 49.9% of the total equity and 25% of the total voting stock provided that the applicant/licensee has a group of investors meeting certain criteria ("Control Group") that holds a majority of the firm's total equity and voting stock (50.1%). In addition, the Commission allows such a single investor to provide the applicant debt financing, certain management and marketing services and to be the beneficiary of standard investor protections (such as veto rights, puts and rights of first refusal) provided that the Control Group maintains de facto and de jure control of the applicant licensee in a manner consistent with Intermountain Microwave, 24 Rad. Reg. 983, 984 (1963). See PCS Order at para. 164 & n.143 and Revised PCS Order at paras. 80-86. Although the Commission treats such a 49% shareholder as "attributable" for purposes of the PCS and Commercial Mobile Radio Service ("CMRS") spectrum aggregation caps and the cellular/PCS cross-ownership rule, New World submits that these interests are attributable because of the entirely distinguishable "duopoly" nature of the wireless telecommunications market. The issue applicable to the broadcast context is that the Commission has decided to not treat a

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stated that permitting this regulatory structure would actually *promote* greater competition and ownership diversity in the wireless telecommunications market by providing certain PCS applicants with greater flexibility in attracting investors and thereby facilitating access to capital.¹¹ New World submits that in the increasingly competitive video marketplace, broadcasters have an equally compelling need for such flexibility in attracting sources of capital. Therefore, New World strongly recommends that the Commission retain its existing single majority shareholder exception to the attribution rules.¹²

Finally, the Commission seeks comment on whether networks may use unattributable equity investments to influence station affiliation decisions.¹³ New World can address this matter from experience after spearheading the largest series of affiliation changes in broadcast history in late 1994. While New World would not presume to speak for all licensees, New World's decision to change the network affiliations of its stations to the FOX Television Network ("FOX") was

¹⁰(...continued)

49.9% PCS shareholder as financially attributable because such an ownership interest it is not prima facie evidence of the ability to control.

¹¹ See PCS Order at paras. 9-14, 93-112.

¹² See 47 C.F.R. § 24.709. If the Commission decides to eliminate this exception, New World strongly supports the proposal to grandfather existing firms covered by the single majority shareholder policy. In addition, the Commission should continue to treat non-voting stock as unattributable.

¹³ Id. at para. 3 n.8.

caused not by a FOX investment, but rather by a programming decision to increase the amount and quality of its stations' entertainment, local news and public affairs programming. To meet these goals, New World required the availability of high visibility time slots for new entertainment programming and for its stations' local news and public affairs programming. Affiliation with FOX was the only practical way New World could accomplish its objective. However, because New World calculated that the switch in affiliation would likely involve the short-term loss of viewers and revenues, New World bargained for FOX to make an investment in New World to reimburse it partially for these revenue losses and increased expenses.¹⁴

New World submits that otherwise unattributable network investments should not be converted simply because they accompany an affiliation agreement. Networks and affiliates bargain with each other regularly. Financial support is provided in a variety of forms, including network compensation, advertising cooperative support, equity or debt. These arrangements carry with them no special characteristics that would permit the Commission to treat some as

¹⁴ In addition, cross-investment between contracting parties is an efficient way to avoid potential long-term problems arising from the contractual relationship. See Oliver and Bengt Holmstrom, The Theory of Contracts, in ADVANCES IN ECONOMIC THEORY, Fifth World Congress, ed. Truman Bewley (Cambridge University Press, 1987).

attributable and others as not¹⁵ or to support treating otherwise unattributable interests as attributable.

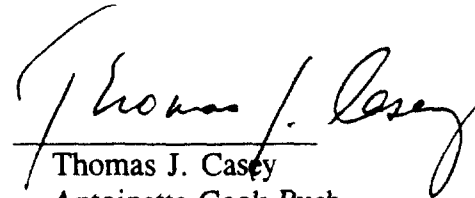
CONCLUSION

New World recommends that the Commission should extend to the TV broadcast context the Commission's PCS "passive investor" framework. If the Commission retains its existing attribution regime, the Commission should retain its existing single majority shareholder policy.

Respectfully submitted by:

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¹⁵ Other than the general rule that voting equity in a entity in which there is no single majority shareholder is generally attributable.

CERTIFICATE OF SERVICE

I, Peter Hannon, do hereby certify that a true and correct copy of the foregoing Comments was hand-delivered on this 17th day of May 1995 to the following persons:

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